
STATE TROOPERS NON-COMMISSIONED OFFICERS ASSOCIATION OF NEW JERSEY, on behalf of its members, and all other persons similarly situated but unnamed, and Pete J. Stilianessis, President of the State Troopers Non-Commissioned Officers Association; and STATE TROOPERS SUPERIOR OFFICERS ASSOCIATION OF NEW JERSEY, on behalf of its individual members, and all other persons similarly situated, and Richard Roberts, President of the Superior Officers Association; and JOHN DOES 1 through 10, who are State Troopers who, for purposes of Privacy, are unnamed,

Appellants-Petitioners,

v.

STATE OF NEW JERSEY, Office of the Attorney General, Gurbir S. Grewal, Attorney General of the State of New Jersey Division of Law and Public Safety Division of State Police; Acting Superintendent of State Police, Patrick Callahan, Division of State Police the Department of Law and Public Safety, and the Office of Law Enforcement Professional Standards,

Defendants/Respondents.

SUPERIOR COURT OF NEW JERSEY

APPELLATE DIVISION

DOCKET NO.: A-003975-19-T4

Civil Action

LEAVE TO APPEAL SOUGHT FROM:
ADMINISTRATIVE ACTIONS OF THE
ATTORNEY GENERAL

On Appeal from the June 15, 2020, and June 19, 2020 Final Administrative Actions of the Attorney General

INTERVORS' BRIEF IN SUPPORT OF MOTION TO INTERVENE

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- Ia6 Attorney General Administrative Executive Directive No. 2020-6, June 19, 2020;

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PRELIMINARY STATEMENT

Two former New Jersey State Troopers ("Troopers") and two non-profit Trooper advocacy groups of which they are members seek to intervene in this Appeal (the "Proposed Intervenors" collectively and the "Organizational Movants" with respect to the two non-profit groups) to underscore the irrationality and illegality of government compelled disclosure of confidential, personal, identifiable information spanning the past 20 years under the moniker of "misconduct" and to highlight the irreparable damage this will likely cause to individuals who are no longer in state law enforcement, their families, and their financial security. The Proposed Intervenors seek to intervene expeditiously, permitting them to file briefs and accompanying supporting documentation on a time frame that will not prejudice the Court or the Appellant-Petitioners, and respectfully request that the Court permit them to do so.

The Organizational Movants, the Association of Former New Jersey State Troopers Association ("FTA") and the N.J. Former Troopers Heritage Foundation, Inc. (the "Heritage Foundation"), have standing to intervene based upon their organizational missions, likely harm to their members, the potential expenditure of resources, the constitutional issues at stake here, and the great public interest at the core of this litigation. The Supreme Court has previously recognized the

FTA as an organization well-positioned to present the interests of former Troopers, thereby assisting the Court in the resolution of issues of public importance pertaining to former Troopers and retired New Jersey public employees at large. (Ia24).

Intervention should be granted both as a right and, in the alternative, permissively. The Proposed Intervenors are profoundly interested in the subject of the Appeal (i.e., the Attorney General Directives (Ia1-8)); failure to enjoin the Directives will impair and impede their ability to protect their interests and that of their members; the unions bringing the Appeal will not adequately represent these interests because the interests of actively employed Troopers are similar to but not entirely in sync with the interests of formerly employed Troopers; and this Motion was brought with all due haste so that the Proposed Intervenors would have the right to participate in this litigation without prejudicing the Court or the existing parties. The Court may also permit intervention because of the almost identical overlap of facts and legal issues to be raised by the Proposed Intervenors.

PROCEDURAL HISTORY

The appeal from the June 15, 2020, and June 19, 2020 Final Administrative Actions of the Attorney General (the "Appeal")¹ was instituted on June 26, 2020 by a number of Appellants-Petitioners, including the State Troopers Non-Commissioned Officers Association of New Jersey and the State Troopers Superior Officers Association of New Jersey. Docket No. A-003975-19-T4. An Application for Emergent Relief was granted on June 26, 2020. An action seeking similar relief was instituted by the State Troopers Fraternal Association of New Jersey ("STFA") in the Law Division, Mercer County, on June 25, 2020 bearing Docket No. MER-L-1140-20 and transferred to the Appellate Division on June 29, 2020 now bearing Docket No. A-003950-19. An Order on Motion in that matter staying the implementation of the Directives pending the Court's disposition of the Appeal was entered on July 8, 2020. (Ia62).

¹ Attorney General Law Enforcement Directive 2020-5 ("Directive 2020-5") and Attorney General Administrative Executive Directive 2020-6 ("Directive 2020-6"), respectively. (Ia1-8). Directive 2020-5 and Directive 2020-6 are collectively referred to as the "Directives."

STATEMENT OF FACTS

The Proposed Intervenors adopt the recitation of facts presented by Appellants-Petitioners in their June 30, 2020 Brief and supplement that recitation to note:

The FTA is a non-profit organization organized under the laws of the State of New Jersey that advocates on behalf of former Troopers who were honorably discharged from service (Ia10 ¶¶ 4-7); and

The Heritage Foundation is also a non-profit organization organized under the laws of the State of New Jersey and it provides financial support to family members of FTA members for FTA related causes. (Ia10 ¶¶ 8-9).

LEGAL ARGUMENT

I. THE MOTION TO INTERVENE SHOULD BE GRANTED

A. The FTA, the Heritage Foundation and Their Members Have Standing to Intervene

Standing is a judicially created principle under New Jersey law, within the Court's discretion to determine and not bounded by the federal Constitution. See Crescent Park Tenants Ass'n v. Realty Equities Corp., 58 N.J. 98, 101, 275 A.2d 433 (1971) ("New Jersey cases have historically taken a much more liberal approach on the issue of standing than have the federal cases."); Id. at 107 ("Unlike the Federal Constitution, there is no express language in New Jersey's Constitution which

confines the exercise of our judicial power to actual cases and controversies.").

Context matters. When review "of an administrative agency's final action or decision is" at issue, standing is "available to the direct parties to that administrative action as well as anyone who is affected or aggrieved in fact by that decision." In re Camden County, 170 NJ 439, 790 A.2d 158, 162 (2002). "Generally, a person who has suffered any economic detriment as a result of an administrative agency action can gain standing for judicial review of that action without proving any unique financial damages." Id. When an organization seeks to advance the interests of its members by contesting such action, "ample indications of a substantial likelihood of harm" to the organization's members will suffice. Home Builders League of South Jersey, Inc. v. Township of Berlin, 81 NJ 127, 134, 405 A.2d 381 (1979); see also Common Cause v. NJ Election Law Enforce. Comm'n, 74 NJ 231, 236, 377 A.2d 643 (1977) ("the impact of the instant regulation on respondent's membership and its declared interest in improving government provides it with a sufficient basis for claiming standing to contest the Commission's action").

The type of litigant is also relevant as "the standing of nonprofit associations to litigate in varying contexts has historically been upheld in New Jersey." In re Ass'n of Trial

Lawyers of Am., 228 N.J. Super. 180, 185, 549 A.2d 446 (App. Div. 1988). The Court there explained at length that its

[e]xamination of these decisions disclose[d] two distinct underpinnings for the principle according standing to such organizations. First, an association "may have standing in its own right to seek judicial relief from injury to itself and to vindicate whatever rights and immunities the association itself may enjoy." Further, "in attempting to secure relief from injury to itself the association may assert the rights of its members, at least so long as the challenged infractions adversely affect its members' associational ties." Second, even in the absence of injury to itself, "an association may have standing solely as the representative of its members." In such a situation, the association must allege that its members, or any one of them, "are suffering immediate or threatened injury as a result of the challenged action of the sort that would make out a justiciable case had the members themselves brought suit."

Id. at 186 (citations omitted).

Also the type of relief sought is relevant. Because injunctive relief inures to the benefit of a group, seeking such relief underscores the standing of the moving group. See New Jersey Dental Association v. Horizon Blue Cross Blue Shield of New Jersey, 2010 WL 4910258 (App. Div. May 30, 2012) (unpublished decision).

Moreover, when matters of "great public interest" are at issue, "any 'slight additional private interest' will be sufficient to afford standing." Salorio v. Glaser, 82 N.J. 482, 491, cert. denied and appeal dismissed, 449 U.S. 874, 101 S. Ct. 215, 66 L. Ed. 2d 94 (1980) (citations omitted); see also Hudson Bergen County Retail Liquor Stores, Ass'n. v. Bd. of Comm'rs of Hoboken, 135 N.J.L. 502, 510, 52 A.2d 668 (E & A 1947) ("it takes but slight private interest, added to and harmonizing with the public interest to support standing to sue"). And when that public interest entails protection of constitutional rights and liberties, standing is most liberally granted. See, e.g., New Jersey State Chamber of Commerce v. New Jersey Election Law Enforcement Commission, 82 NJ 57, 68-69, 411 A.2d 168 (1980).

The Appeal involves matters of great public interest and the regulatory actions at issue infringe on the constitutional rights of Troopers and former Troopers. The Directives being challenged are a byproduct of the societal fire now ablaze about the role of the police in our communities, the impact police training and law enforcement techniques may have on racial bias and disparities, and whether reallocating funds away from policing and the disclosure of police misconduct will ameliorate those disparities. The FTA has been an active participant in those discussions, for example publishing to its membership for

review and comment the collective position of Trooper unions on these issues. (Ia14 ¶ 13, Ia38).

The Court need not fish around for the impact the Directives will have on the FTA and its membership. The harms and damage will likely be real, immediately felt, and in many instances irreparable. (Ia32 ¶¶ 17-21, Ia35 ¶¶ 17-23). To take some liberties with a famous adage, the impression given the public just by associating names of retired Troopers with the term "misconduct" will travel halfway around the world before the truth can get its boots on.

The two anonymous retired Troopers who have submitted certifications have a pointed interest in having the confidentiality of their voluntary negotiated plea agreements remain intact, as promised and as relied upon. (Ia32, Ia35). They would have their names and related personal information published and associated with alleged work-related misconduct if the Directives went into effect, and they are justifiably concerned about the likely consequences of such publication, particularly in the current social environment. (Ia32 ¶¶ 6, 17-21; Ia35 ¶¶ 6, 17-23). They are also members of the FTA, which confers standing upon that Organizational Movant. See People for Open Gov't v. Roberts, 397 NJ Super. 502, 938 A.2d 158, 166 (App.Div.2008) ("Because of the individual plaintiffs'

standing, the organizational plaintiff, [], of which they are members, has standing as well.”).

Even if no individual FTA member sought to intervene in the Appeal, the FTA and the Heritage Foundation have strong organizational interests in safeguarding the rights and benefits that accrued to FTA members as a result of their prior New Jersey Division of State Police (“NJDSP”) employment and in prudently allocating the assets of a non-profit. (Ia14 ¶ 15). Many retired Troopers have created their own businesses or gone into related employment based in large measure on their reputation as having served and been honorably discharged by the NJDSP. (Ia9 ¶¶ 19-23). Publicly associating their names with misconduct, as compelled by the Directives, will cause irreparable harm to these financial interests and, therefore, to these individuals. (Id.) It is also likely that families will seek funding from the Heritage Foundation to help counteract such damage, and the responsible officers of the Heritage Foundation will be called upon to decide how to prudently allocate the foundation’s limited resources. (Ia9).

The Organizational Movants also have a constitutional right to review final governmental actions under R. 2:2-3(a). Rule 2:2-3(a) provides that

“appeals may be taken to the Appellate Division as of right . . . (2) to review final decisions or actions of any state administrative agency or officer, and to review the

validity of any rule promulgated by such agency or officer . . . except that review pursuant to this subparagraph shall not be maintainable so long as there is available a right of review before any administrative agency or officer, unless the interest of justice requires otherwise."

It was adopted pursuant to the "constitutional grant" set forth in N.J. Const. (1947), Art. VI, § V, par. 4. Pascucci v. Vagott, 71 NJ 40, 52 (1976). The Organizational Movants, both creatures of New Jersey State law, seek to invoke their constitutional right to respectfully request that this Court enjoin improper and illegal governmental action.

B. The Movants Present a Compelling Case For Intervention

1. The Court Should Be Guided By R. 4:33 To Decide The Motion

Although the Rules of Court do not specifically address how the Appellate Division should adjudge a motion to intervene in an appeal under R. 2:2-3(a), R. 4:33 provides an appropriate

source of guidance.² See Warner Company v. Sutton, 270 NJ Super. 658, 637 A.2d 960 (App.Div. 1994) (ordering intervention by movants under R. 4:33-2 standards); R. 1:1-2(a) ("In the absence of rule, the court may proceed in any manner compatible with these purposes"); cf. Chesterbrooke Limited Partnership v. Planning Board of Tp. of Chester, 237 N.J. Super. 118, 567 A.2d 221 (App.Div.), certif. denied, 118 N.J. 234, 570 A.2d 984 (1989) (applying R. 4:33-2 to determine whether motion to intervene solely for the purposes of appeal should have been granted). This is especially true since the Appellate Division is sitting as the first court to review the Directives, and the

² Organizations may move to intervene in appeals governed by R. 2:2-3(a)(2) (see, e.g., Animal Prot. League of NJ v. NJ Dep't. of Env't. Prot., 2010 WL 4910258 at n.1 (App. Div. Dec. 3, 2010) (unpublished decision), and such motions have been granted by the Appellate Division. See, e.g., Animal Prot. League of NJ v. NJ Dep't. of Env't. Prot., 423 NJ Super. 549 (2011) certif. denied, 210 NJ 108 (2012). R. 4:33, however, cannot be grafted in toto to an appellate proceeding, as some of its provisions have no applicability. See, e.g., R. 4:33-3 (requiring submission of a "pleading setting forth the claim or defense for which intervention is sought"); see also R. 4:5-1(a) (identifying types of "pleadings"). The analogue of a pleading in the Appeal would be a Brief, and Proposed Intervenors represent that their brief would closely track the legal arguments already presented to the Court by the Appellants-Petitioners.

Proposed Intervenor have had no prior opportunity to contest their legality. The Court may also find germane the arguments posited above demonstrating that the Proposed Intervenor have standing. See New Jersey Department of Environmental Protection v. Exxon Mobil Corp., 453 NJ Super. 272, 181 A. 3d 257, 266 (App. Div.), certif. denied, 233 NJ 378 (2018) ("when considering whether a third party may become directly involved in pending litigation or administrative action, our courts have repeatedly used the phrase "standing to intervene" as conceptually equivalent to 'standing'").

**2. The Movants Have A Right to Intervene
Consistent With R. 4:33-1**

R. 4:33-1 provides for intervention of right as follows:

Upon timely application anyone shall be permitted to intervene in an action if the applicant claims an interest relating to the property or transaction which is the subject of the action and is so situated that the disposition of the action may as a practical matter impair or impede the ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

Our courts hold that a motion to intervene should be "liberally construed." Atlantic Employers Insurance Company v. Tots & Toddlers Pre-School Daycare Center, 239 N.J. Super. 276, 280 (App. Div. 1990), certif. denied 122 N.J. 147 (1990). The court held in ACLU v. Hudson County, 352 N.J. Super. 44, 67

App. Div. 2002), certif. denied 174 N.J. 190 (2002): "as the rule is not discretionary, a court must approve any application for intervention as of right if the criteria are satisfied." See also Allstate New Jersey Ins. Co. v. Neurology Pain Associates, 418 N.J. Super. 246, 254 (App. Div. 2011).

Pursuant to R. 4:33-1, the movant must meet the following criteria:

(1) claim an interest relating to the property or transaction which is the subject of the litigation;

(2) demonstrate that it is so situated the disposition of the litigation may impair or impede its ability to protect that interest;

(3) demonstrate that its interest is not adequately represented by existing parties; and

(4) make a timely application to intervene.

"[T]he polestar for evaluating a claim for intervention is always whether the proposed intervenor's interest is direct or remote." Kleissler v. Ridgway Area School District, 157 F.3d 964, 972 (3d Cir. 1998) (decided under the federal analogue to R. 4:33-1)³. This rule is not discretionary and requires a

³ "Rule 4:33-1 tracks the language of Fed. R. Civ. P. 24(a)(2) verbatim." New Jersey Department of Environmental Protection v. Exxon Mobil Corp., 453 NJ Super. 272, 181 A. 3d 257, 266 (App. Div.), certif. denied, 233 NJ 378 (2018).

court to approve an application for intervention if the four criteria are satisfied. ACLU v. Hudson County, supra at 67; Meehan v. K.D. Partners, L.P., N.J. Super 563, 568 (App. Div. 1998).

The Proposed Intervenors easily satisfy all four criteria.⁴

a. The Profound Interest in this Litigation

The FTA is profoundly interested in the Appeal. Its membership, consisting exclusively of former Troopers honorably discharged from the New Jersey State Police ("NJSP") (and their families), may have their disciplinary histories and personal identities published pursuant to the Directives and associated with "misconduct." (Ia9, Ia32, Ia35). Under Directive 2020-6, that disclosure would begin as early as July 15, 2020 and, if permitted to occur, would violate the rights of FTA's members under applicable law, the State and Federal Constitutions, and tenets of public policy as set forth in the June 30, 2020 Brief of the Appellants-Petitioners. It would also cause the officers and trustees of the Heritage Foundation to determine whether to

⁴ The individual Proposed Intervenors so obviously meet these factors that little discussion is merited. Their contractual and constitutional rights are at stake, and each runs the risk of irreparable harm if this Court does not grant the requested relief. The parties to the Appeal may not adequately represent their interests and this Motion is timely, respectively for the reasons discussed in the main body of this Brief.

expend the foundation's limited resources providing financial assistance to impacted families. (Ia9 ¶ 8). New Jersey Courts "take a practical approach in determining whether a moving party has a cognizable interest in litigation that it is entitled to protect by intervention." Allstate N.J. Ins. Co. v. Neurology Pain Assoc., 418 N.J. Super. 246, 254-55 (App. Div. 2011); ACLU, supra, 352 N.J. Super. at 67-69. Practically speaking, both FTA and the Heritage Foundation have cognizable interests relevant to the Appeal. (Ia9).

b. The Prospect of Impairment to The Movants' Interests

The requirement to show that an intervenor's interest would be impaired is simply that their ability to protect their interest "may as a practical matter," rather than as a certainty, be impaired or impeded. R. 4:33-1. In interpreting the analogous provision of the federal rule, Courts have held that "[t]o satisfy this element of the intervention test, a would-be intervenor must show only that impairment of its substantial legal interest is possible if intervention is denied. This burden is minimal." Utah Assoc. of Counties v. Clinton, 255 F.3d 1246, 1253 (10th Cir. 2001) (permitting intervention as of right to environmental interest groups challenging use of public lands).

An adverse disposition of the Appeal may "impair or impede" the ability of the FTA and the Heritage Foundation to protect the interests of their members. The FTA's sine qua non is to uphold the rights, privileges and benefits that accrue to its members as a result of their Trooper service and honorable discharge status. (Ia9). Honorably discharged Troopers join the FTA and pay their fees and other assessments so that the FTA may advocate on their behalf and advance their interests. (Id.) An impotent FTA would be an organization with no platform to demand member remittances or loyalty. Similarly, a diversion of Heritage Foundation assets to help members and their families adversely impacted by the Directives will result in fewer assets to be spent on other Heritage Foundation causes. (Id.)

c. Inadequate Representation Due To Divergence Of Interests

Consistent with the general policy favoring intervention, Courts have characterized the burden to demonstrate inadequate representation as "minimal." See Trbovich v. United Mine Workers of Am., 404 U.S. 528, 538 n.10 (1972); Armada Broadcasting, Inc. v. Stirn, 183 Wis.2d 463, 476 (1994). In ACLU, supra, the Court concluded that the United States had demonstrated that the defendant counties could not adequately protect the federal government's interest in litigation seeking, *inter alia*, INS detainee records.

In this case, FTA and the Heritage Foundation meet this low threshold. While the interests of the Appellants-Petitioners, who are collective bargaining representatives, and the FTA and its membership may be in accord, they are not in perfect alignment. The Appellants-Petitioners are run by officers who serve at the democratic will of their membership; retired Troopers do not participate in that process because they cannot be voting members of any of these unions. (Ia9 ¶¶ 17-22). That organizational dichotomy takes on heightened significance when overlaid against two labor law principles.

First, terms and conditions of benefits and other rights of retired Troopers that derive from their prior Trooper employment are not "mandatorily negotiable subjects" under the New Jersey Employer-Employee Relations Act, NJSA 34:13A-1 et seq. (the "EERA").⁵ See Township of Toms River v. Fraternal Order of Police Lodge No. 156, No. A-0827-14T3 (App. Div. Mar. 16, 2016) (unpublished decision); accord Allied Chemical & Alkali Workers of America v. Pittsburgh Plate Glass Co., 404 U.S. 157, 92 S. Ct. 383, 30 L. Ed. 2d 341 (1971). They are non-mandatory subjects, and are categorized as "permissive" subjects

⁵ Collective bargaining for Troopers is governed by the EERA. See N.J.S.A. 34:13A-15 ("'Public police department' means any police department or organization of . . .the State. . .including but not necessarily limited to units composed of State troopers . . .").

for purposes of Trooper collective bargaining. Our Supreme Court has explained the significance of that typology:

The distinguishing feature of the permissive category is that neither party is required to negotiate with respect to any such subject. The employees may propose an item from the permissive category, but the employer may simply refuse to discuss that subject at any time before an agreement is reached. The employees may not insist on that item to the point of impasse or pursue interest arbitration with regard to the item unless the employer consents.

Paterson Police PBA v. Paterson, 87 NJ 78, 88, 432 A.2d 847

(1981). Thus, neither the Appellants-Petitioners nor the STFA could insist that the State agree to bargain over retiree matters, including the application or modification of the Directives to retired Troopers.

Second, under the principles articulated in Vaca v. Sipes, 386 U.S. 171, 87 S.Ct. 903, 17 L.Ed.2d 842 (1967), as adopted by our Courts, a union is afforded a wide degree of legal latitude in determining how to spend its limited resources to represent its members and may make trade-offs against different membership subgroups. See D'Arrigo v. New Jersey State Board of Mediation, 119 NJ 74, 79, 574 A.2d 44 (1990) (breach of the union's duty of fair representation occurs only when a representative's conduct toward a unit member is arbitrary, discriminatory, or in bad faith). So while a union may have

the ability to pursue a contractual grievance or seek arbitration of an issue that impacts the rights of retirees⁶, it also has the latitude not to do so or to settle grievances in ways that impact different subgroups of stakeholders differently. (Id.) Furthermore, while there is no definitive ruling from the New Jersey Supreme Court on the topic, it is generally accepted that private sector unions do not owe any duty to retirees even if the labor contract contains provisions beneficial to retirees. See, e.g., Bensel v. Allied Pilots Ass'n, 387 F.3d 298 (3d Cir.2004); Nelson v. Stewart, 422 F.3d 463, n.4 (7th Cir. 2005).

The United States Court of Appeals for the Eighth Circuit cogently synthesized the import of these two principles:

[F]orcing a union to represent both active employees and retirees "would create the potential for severe internal conflicts that would impair the [bargaining] unit's ability to function and would disrupt the process of collective bargaining" because **active employees and retirees "do not share a community of interest** broad enough to justify inclusion of the retirees in the bargaining unit." The difficulty for the union in representing both active employees and retirees is most apparent in the contract negotiation process. In contract negotiation the conflict

⁶ See, e.g., Twp. of Voorhees v. Voorhees Police Officers Ass'n, 2012 WL 3656316 aff'd, No. A-1742-11 (App. Div. Aug. 28, 2012) (unpublished decision).

of interest between the active employees and the retirees is made clear as the total benefits available from the employer are divided between active employees and retirees. Though the conflict is clearer in the negotiation process, there is also a conflict of interest between active employees and retirees in the contract administration process. In contract administration the union must choose which grievance to pursue with limited resources. More resources spent pursuing retiree grievances means less available for grievances of active employees. Further, a victory for a retiree in a contract administration matter may ultimately be paid for by the active employees. If a retiree victory reduces the employer's assets, there will be less available for future benefits to active employees.

Anderson v. Alpha Portland Industries, Inc., 727 F.2d 177, 183 (8th Cir.1984) (citation omitted and emphasis supplied), rev'd on other grounds, 752 F.2d 1293 (8th Cir.) (en banc) cert. denied, 471 U.S. 1102, 105 S.Ct. 2329, 85 L.Ed.2d 846 (1985).

Hence, FTA members as a practical matter cannot count on the Appellants-Petitioners to represent their interests singularly, zealously, and with no conflict or bias. That reason was a prime motivating factor in the unanimous decision of the FTA board to seek to intervene in the Appeal. (Ia9 ¶22).

d. Timeliness

As for timeliness for intervention purposes, the Proposed Intervenors filed the instant Motion within days after the

Appeal was filed and will comply and/or conform to any briefing schedule established by the Court. Based upon this, there should be no prejudice to the Court or the parties.

3. The Court May Permit The Organizational Movants to Intervene Under R. 4:33-2

The Organizational Movants also satisfy the standards for permissive intervention. Permissive intervention is governed by R. 4:33-2:

Upon timely application anyone may be permitted to intervene in an action if the claim or defense and the main action have a question of law or fact in common. When a party to an action relies for ground of claim or defense upon any statute or executive order administered by a state or federal government agency or officer, or upon any regulation, order, requirement or agreement issued or made pursuant to the statute or executive order, the agency or officer upon timely application may be permitted to intervene in the action. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

[R. 4:33-2.]

"Where intervention of right is not allowed, one may obtain permissive intervention under R. 4:33-2," Atl. Emp'rs Co., supra, 239 N.J. Super. at 280, where the "claim or defense and the main action have a question of law or fact in common."

R.4:33-2. Similar to R. 4:33-1, the permissive intervention rule "is to be liberally construed by trial courts," in whose discretion the decision to grant intervention is reposed. Zirger v. Gen. Accident Ins. Co., 144 N.J. 327, 341 (1996).

The factors to be considered are the promptness of the application, whether or not the granting thereof will result in further undue delay, whether or not the granting thereof will eliminate the probability of subsequent litigation, and the extent to which the grant thereof may further complicate litigation which is already complex. Pressler and Verniero, Current N.J. Court Rules, comment on R. 4:33-2 (2020) (citation omitted).

Here, every factor weighs in favor of permitting intervention by the Organizational Movants. The claims of the Appellants-Petitioners and the Organizational Movants have questions of law and fact in common. Because the Organizational Movants and the Appellants-Petitioners have the same objective - the enjoinder of the Directives - and because the Organizational Movants and the Appellants-Petitioners represent so many of the same common interests, the Organizational Movants will be presenting the same basic facts and many of the same legal principles to the Court as the Appellants-Petitioners have. (Id.)

Permitting intervention will not unduly delay or prejudice the adjudication of the rights of the original parties. The Organizational Movants sought intervention within a few business days after the Appellants-Petitioners submitted their Brief on June 30, 2020, and they intend to rely upon the arguments already presented to the Court with little variation. Consequently, there would be no undue delay and/or prejudice as a result of allowing the Organizational Movants to intervene in this matter.

CONCLUSION

For the foregoing reasons, the Proposed Intervenors respectfully request that the Court their motion to intervene and allow them to join the Appeal as a party.

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State Troopers, the N.J. Former
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Inc., and Former Trooper & FTA
Members No. 1 & 2

By: /s/ Anthony M. Rainone
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DATE: July 8, 2020

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STATE TROOPERS NON-COMMISSIONED OFFICERS ASSOCIATION OF NEW JERSEY, on behalf of its members, and all other persons similarly situated but unnamed, and Pete J. Stilianessis, President of the State Troopers Non-Commissioned Officers Association; and STATE TROOPERS SUPERIOR OFFICERS ASSOCIATION OF NEW JERSEY, on behalf of its individual members, and all other persons similarly situated, and Richard Roberts, President of the Superior Officers Association; and JOHN DOES 1 through 10, who are State Troopers who, for purposes of Privacy, are unnamed,

Appellants-Petitioners,

v.

STATE OF NEW JERSEY, Office of the Attorney General, Gurbir S. Grewal, Attorney General of the State of New Jersey Division of Law and Public Safety Division of State Police; Acting Superintendent of State Police, Patrick Callahan, Division of State Police the Department of Law and Public Safety, and the Office of Law Enforcement Professional Standards,

Defendants/Respondents.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO.: A-003975-19-T4

Civil Action

On Appeal from the June 15, 2020, and June 19, 2020 Final Administrative Actions of the Attorney General

NOTICE OF MOTION TO INTERVENE BY THE ASSOCIATION OF FORMER NEW JERSEY TROOPERS, THE N.J. FORMER TROOPERS HERITAGE FOUNDATION, INC., AND FORMER TROOPER MEMBERS & FTA MEMBERS NO. 1 & 2

TO: Clerk, Appellate Division
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Emily Marie Bisnauth, Esq.
Deputy Attorney General
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ON NOTICE TO:

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PLEASE TAKE NOTICE the undersign attorneys for Intervenors
the Association of Former New Jersey Troopers ("FTA"), the New
Jersey Former Troopers Heritage Foundation, Inc. ("Heritage

Foundation"), and Former Trooper Members & FTA Members No. 1 & 2, by and through their undersigned counsel, shall move before the Superior Court of New Jersey, Appellate Division, for an Order granting their Motion to Intervene pursuant to R. 4:33-1 and R. 4:33-2.

PLEASE TAKE FURTHER NOTICE that in support this motion, FTA and the Heritage Foundation shall rely upon the accompanying Brief and Appendix Volume I as well as Plaintiff-Appellant's Brief filed June 30, 2020.

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By: /s/ Anthony M. Rainone
Anthony M. Rainone, Esq.

DATE: July 8, 2020